

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NORTHEASTERN DIVISION AT COOKEVILLE**

**B.A.P., a minor child by and through)
her parent, RICHARD PENKOSKI;)
and RICHARD PENKOSKI, as the)
parent and legal guardian of B.A.P.,)**

Plaintiffs,

v.

**OVERTON COUNTY BOARD OF)
EDUCATION, RICHARD MELTON,)
and STEPHEN HENSON,)**

Defendants.

Case No. 2:20-cv-00065

**Chief Judge Waverly D. Crenshaw, Jr.
Magistrate Judge Alistair E. Newbern**

**MOTION FOR SUMMARY JUDGMENT OF INDIVIDUAL
DEFENDANTS RICHARD MELTON AND STEPHEN HENSON**

NOW COME the Individual Defendants, Richard Melton and Stephen Henson, by and through counsel, and, pursuant to *Fed. R. Civ. P.* 56 and L.R. 7.01(a), respectfully submit their Motion for Summary Judgment regarding all remaining claims against them. In support of this Motion, the Individual Defendants would show this Court the following:

1. The only claims remaining against the Individual Defendants are B.A.P.'s claims alleging her First Amendment rights were infringed when she was told by Individual Defendant Richard Melton that the shirt she wore to Livingston Academy on August 25, 2020 violated the dress code.
2. The 2020-21 Livingston Academy dress code was content neutral, and the section of the dress code that B.A.P.'s shirt violated was clear and consistently enforced.

3. Plaintiffs cannot establish that Individual Defendant Stephen Henson was a decision-maker regarding the determination that B.A.P.'s shirt violated the dress code. As such, Plaintiffs cannot establish that Stephen Henson violated B.A.P.'s First Amendment rights at any time.
4. Even if Plaintiffs could establish that Stephen Henson was a decision-maker, he is entitled to qualified immunity, as Plaintiffs cannot show that he violated B.A.P.'s clearly established constitutional rights at any time.
5. Individual Defendant Richard Melton is entitled to qualified immunity, as he communicated to both Plaintiffs that B.A.P.'s shirt violated the dress code because one of the words on the shirt had a sexual connotation, which was a violation of the school's clear and content neutral dress code. Plaintiffs cannot show that he violated B.A.P.'s clearly established constitutional rights at any time.
6. Alternatively, the content of B.A.P.'s shirt is not protected by the First Amendment, as B.A.P.'s wearing of the shirt, in conjunction with related actions taken by B.A.P. and Richard Penkoski, was done to target Stephen Henson. Further, the content of B.A.P.'s shirt had the potential to substantially disrupt and collide with the rights of other students. Per *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969), the content of her shirt is not entitled to First Amendment protection.

In further support of this Motion for Summary Judgment, the Individual Defendants rely upon the corresponding exhibits attached to this Motion and their supporting Memorandum of Law and Statement of Undisputed Material Facts, filed contemporaneously herewith.

WHEREFORE, PREMISES CONSIDERED, there are no genuine disputes of material fact that support any of B.A.P.'s remaining claims against the Individual Defendants. The Individual Defendants are entitled to summary judgment as a matter of law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on **September 21, 2023**, the foregoing **Motion for Summary Judgment of Individual Defendants Richard Melton and Stephen Henson** has been served via electronic mail through the Court's ECF system to the following:

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